

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

BRICKTOWN CAPITAL, L.L.C.
d/b/a KNIGHTS INN

Plaintiff,

VERSUS

ASPEN SPECIALTY INSURANCE
COMPANY

Defendant

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CASE NO. CIV-15-799-M

NOTICE OF REMOVAL

Defendant, Aspen Specialty Insurance Company, (“Aspen”), appearing herein through undersigned counsel, pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal of the captioned action “*Bricktown Capital, LLC, d/b/a Knights Inn, v. Aspen Specialty Insurance Company*”, case no. CJ-2015-3065, on the docket of the District Court of Oklahoma County, State of Oklahoma. In support of its Notice of Removal, Defendant respectfully represents that:

1.

Plaintiff filed this suit on March 29, 2015 in the District Court for the County of Oklahoma, State of Oklahoma.

2.

This lawsuit is filed pursuant to a property insurance policy, no. PRA9G6Q13, issued by Aspen to Plaintiff which generally provides coverage for certain property

located at 2001 E. Reno Avenue, Oklahoma City, OK 73117. With respect to the property insured, said policy affords \$5,000,000 in coverage limits for the building and business income.

3.

Plaintiff seeks additional payment for damages allegedly sustained to the property as a result of a May 31, 2013 storm event.¹ Plaintiff also seeks recovery under the policy for alleged loss of business income.² Aspen previously paid Plaintiff over \$500,000 under the applicable policy. Plaintiff now alleges in its Petition that the covered damages are estimated to be \$1,318,047.50.³ Plaintiff also seeks recovery of damages for alleged breach of the duty of good faith and fair dealing, exemplary damages, financial loss, mental and emotional distress, and attorneys' fees.⁴ Plaintiff affirmatively alleges that the amount in controversy is in excess of \$75,000.⁵

4.

Removal is based on 28 U.S.C. §1332 as the parties are completely diverse and, upon information and belief, the amount in controversy for the claims of Plaintiff exceed the sum of \$75,000, exclusive of interests and costs.

¹ See Exhibit 1 - Petition, ¶ 15; 33-35; 48.

² Exhibit 1 - Petition, ¶ 32.

³ Exhibit 1 – Petition, ¶ 41.

⁴ Exhibit 1 – Petition, ¶ 49-50.

⁵ *Id*

5.

Considering the Plaintiff's contractual claim for insurance proceeds in addition to the claims for actual damages, exemplary damages, and attorney's fees for Aspen's alleged bad faith, the jurisdictional amount in controversy requirement is satisfied in this case.

6.

Absent a statute limiting recovery, "[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints" stating that the damages are not more than the minimum jurisdictional amount. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir.1995) (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992)). "The general principle is that plaintiffs will have to show that they are bound irrevocably by their state pleadings." *Id.* at 1412 n.10. No binding stipulation or affidavit was filed with Plaintiff's Petition. Accordingly, it can be presumed that Plaintiff's damages exceed the minimum jurisdictional amount.

7.

Due to the nature of the alleged damages, it is facially apparent from the petition that the amount in controversy exceeds \$75,000.

8.

Plaintiff is an Oklahoma Limited Liability Company.⁶

9.

Aspen is a foreign corporation organized under the laws of the state of North Dakota, with its principal place of business located in Boston, Massachusetts.

10.

Aspen received a courtesy copy of the Plaintiff's Petition on June 25, 2015, which was provided to undersigned counsel by counsel for Plaintiff.⁷ Aspen is filing this Notice of Removal within 30 days of receipt of the Petition and this notice of removal is timely.

11.

Accordingly, this Court has jurisdiction over this matter under the provisions of 28 U.S.C 1332, and this matter is removed under the provisions of 28 U.S.C. 1441 and 1446.

12.

The Judicial District Court where the plaintiffs filed the Petition for Damages is located within the Western District of Oklahoma. Therefore, venue is proper pursuant to 28 U.S.C. §1441(a) because it is the "district and division embracing the place where such action is pending." See 28 U.S.C. §1441(a).

13.

No previous application has been made for the relief requested herein.

14.

Aspen has attached a copy of the Petition, State Court Docket Sheet, and Civil Cover Sheet as exhibits to this notice. This Notice of Removal is being served upon

⁶ See Petition, ¶ 1.

⁷ See Exhibit 2 - E-mail dated June 25, 2015.

counsel for Plaintiff and a copy is being filed with the clerk of court in the County where Plaintiff filed the Petition.

15.

Pursuant to Rule 11 of the Federal Rules of Civil Procedure, undersigned counsel certifies that he has read the foregoing Notice of Removal, that, to the best of his knowledge, information and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

WHEREFORE, Defendant, Aspen Specialty Insurance Company, hereby removes the above-entitled action from the District Court for the County of Oklahoma, State of Oklahoma to this, the United States District Court for the Western District of Oklahoma.

Respectfully submitted,

**LOBMAN, CARNAHAN, BATT,
ANGELLE & NADER**

/s James P. Nader

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*Attorneys for Aspen Specialty Insurance
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Certificate of Service

I hereby certify that on July 22, 2015, I transmitted the attached document to
counsel for the Plaintiff via e-mail.

/s James P. Nader
